

CONSERVATION COMMISSION
REGULAR MEETING SEPTEMBER 20, 2011
TOWN COUNCIL CHAMBERS

These minutes are not verbatim, but represent a summary of major statements and comments. For minutes verbatim, refer to audiotapes on file in the Office of the Town Clerk. Audiotapes are retained for the minimum period required under the retention schedule as provided under Connecticut Law.

Vice-Chairman Igielski called the roll call at 7:05 p.m. and noted Commissioners Block, Byer, Shapiro and Zelek were present. Also present was Town Engineer Chris Greenlaw.

ITEM III
ACCEPTANCE OF MINUTES

Regular Meeting of August 16, 2011

Commissioner Igielski noted the following corrections:

- A. Top of Page 4---He noted Remark "E" should read "Test holes (holed) were dug...with an under lying sandy soil)."
- B. Middle of Page 5---Remark by Mr. Ulrich LaFosse should read "Mr. LaFosse, a Geotectonic Engineer...an adverse effect on the wetland? He also noted...a complex question)."
- C. Top of Page 13---He noted Remark "E" should read "Chairman Pappa announced that this was his (is) last meeting...moving to Rocky Hill)."

Commissioner Block noted the following corrections:

- A. Middle of Page 6---General discussion should read "There was a general discussion...and issue of seismic vibrations...details of the discussion)."
- B. Middle of Page 6---Remark by Commissioner Block should read "Commissioner Block asked if the seismic vibrations...that it would not happen)."

Recording Secretary Peter Arburrr noted that Remark "D" on Page 13 should read "(Mr. Ferraro noted that...September 16th (5th) is his last day of work)."

Motion made by Commissioner Block to accept the minutes as corrected and was seconded by Commissioner Zelek. There was no discussion. Vote was 5 yes, 0 no and the motion was carried.

ITEM IV
PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

Mr. Gary Bolles, 28 Burdon Lane asked Commissioners and members of the public to speak directly into the microphone because it is difficult for the public to hear. He also noted that the Town administration should be made aware that the air handling system is very noisy.

Motion made by Commissioner Shapiro to move ITEM VC to the top of the agenda and was seconded by Commissioner Zelek. There was no discussion. Vote was 5 yes, 0 no and the motion was carried.

ITEM VC
Election of Chairman

Motion made by Commissioner Zelek to place in nomination the name of Commissioner Block for Chairman and was seconded by Commissioner Shapiro.

No other name was placed in nomination.

Vote was 5 yes, 0 no and the motion was carried. Commissioner Block assumed the position of the Chair.

ITEM VA
Application 2011-08, 8 Barnhill Lane

Mr. John Zaczyk of Carolyn Pools, and representing the applicant, entered the following remarks into the record:

- A. Construct a 21 foot by 33 foot in ground pool that would be located with in the 100 foot up land review area as shown on the site plan.
- B. Silt fence would be installed around the work area as shown on the site plan.
- C. All excess excavated material would be moved off site.
- D. The letter dated August 24th included the explanation of work, a copy of the site plan and a picture of a similar pool in the area.

Mr. Chris Greenlaw noted that there were two regulated areas on the property as noted below:

- A. The 100 foot upland review area (pool location).
- B. The Conservation Easement where a minor silt fence intrusion would need Commission approval.

Chairman Block asked the following questions:

- A. What is the importance of the Conservation Easement? Mr. Greenlaw responded we do not want any intrusion into the easement. We should try to move the silt fence out of the easement.
- B. What is the reason not to rotate the pool 90 degrees to keep it out of the 50 foot (zoning) wetland buffer? Mr. Zaczek responded there an existing deck and other items in the area.
- C. How would the back wash water be handled? Mr. Zaczek responded that water would be re-circulated by using a carbon filter system.
- D. Would there be no drainage from the pool out letting into the wetland? Mr. Zaczek responded in the affirmative.
- E. He asked the property owner why the pool could not be moved? Ms. Sharon Lichota responded the drawing does not show the actual size of the deck.

Commissioner Igielski asked the following questions

- A. Would a deck be built around the pool? Ms. Lichota responded no. The pool would have a 3 foot wide concrete edge.
- B. Does the pool (as shown) totally lie within the wetland buffer? Mr. Greenlaw responded that the pool lies within the 100 foot upland review buffer.

Commissioner Byer asked if the dashes (on the drawing) marked the location of the silt fence? Mr. Zaczek responded yes.

Chairman Block asked if a permanent fence would be installed around the pool? Ms. Lichota responded yes. We are looking to the fence company to take care of it.

Chairman Block said the Commission needs a better plan showing the issues raised tonight.

Ms. Lichota asked how adverse would the effect be in drilling post holes (for the fence)? Chairman Block responded the activity would be take place in a regulated area.

Mr. Greenlaw asked if the Chairman wanted the items discussed tonight to be added to the plan? Chairman Block responded yes.

Mr. Zaczek asked if the Commission wanted the deck changed and the pool location adjusted?

Chairman Block requested that Mr. Greenlaw look into the deck to see how it was built and if the Commission was involved.

Commissioner Zelek asked why is the fence shown in the Conservation Easement? Mr. Greenlaw responded the owner was not aware of it. He found the Conservation Easement during his review of the application.

Motion made by Commissioner Igielski to table the item over to the October meeting and was seconded by Commissioner Zelek. There was no discussion. Vote was 5 yes, 0 no and the motion was carried.

Item VB

Application 2011-09, 3573 Berlin Turnpike

Mr. Ozzie Torres P.E. and representing the Mr. James Brown, the applicant, entered the following remarks into the record:

- A. The property is approximately 3 acres in size with a restaurant use. Fifty (50) % of the property is paved and fifty (50) % has a gravel surface.
- B. In 1994 approval was granted for grading of the rear area of the property.
- C. The request is to demolish the existing structure and construct a commercial development with three (3) new buildings.
- D. Request is being made to install a new (control) structure (for future proposed under ground detention system) and outlet pipe to watercourse. In addition, the existing twelve (12) inch RCP would be removed and would be replaced with a twelve (12) inch CPEP per plan.
- E. An under ground storm water detention system would be installed where post development flows would not exceed pre-development flows off site. The system would contain isolation rows.
- F. The only wetland impact would be the fifteen (15) inch outlet pipe at the edge of the watercourse.
- G. Three (3) water quality structures would be installed (one on each of the three [3] drainage lines entering into the under ground detention system).
- H. A soil scientist found the watercourse to be the only regulated area affecting the property.
- I. The edge of the back building would encroach into the 50 foot (zoning) wetland buffer.

Chairman Block asked what was the function of the 20 foot drainage easement? Mr. Torres responded it relates to the existing catch and pipe out to Rowley. It is only a construction easement that has no present value and the pipe and catch basin would be removed. He also noted that use of the easement and pipe were explained in the "Sequence of Site Development and Installation of Control Measures" noted under the Sediment and Erosion Control Plan and is depicted on Plan Sheet C-1.

Chairman Block noted that each of the two (2) restaurants had a separate grease trap. He expressed a concern that the pipes could erupt resulting in effluent entering into the on site drainage system.

Mr. Torres noted that the each grease trap structure would be located in the grass strip area and conforms to MDC requirements. He would review the matter.

Chairman Block noted parking spaces at the rear of building abutting the MDC easement. He expressed a concern of run off impacting the easement area.

Mr. Torres noted the edge of the pavement would be curbed and run off would flow back into the on site drainage system.

Chairman Block noted that the plan does not show the location of any dumpsters at the rear of the retail building.

Mr. Torres noted that dumpsters would be installed and a six (6) foot fence could be installed along the property line to keep debris from entering the watercourse.

Commissioner Igielski noted it would be better to keep the dumpsters away from the back of the building. He suggested that it would be better to place them at the ends of the building.

Mr. Torres said the dumpsters could be located at the ends of the building and the plan would be revised.

Commissioner Byer noted the fence location should provide adequate space for the movement of vehicles.

Mr. Torres said that would not be a problem.

Commissioner Zelek noted the pavement in the rear of the building lies within the zoning 50 foot wetland buffer line.

Commissioner Block asked if the fourteen (14) parking spaces at the rear of the (retail) building were needed? Mr. Torres responded that the parking spaces could be deferred and grass planted.

Alterate Zelek asked if there was any alternate to paving the rear of the (retail) building? Mr. Torres responded deliveries would be made from the back of the building. This is the most efficient way. It would be made as narrow as possible.

Motion made by Commissioner Igielski to table the item over to the October meeting and seconded by Commissioner Zelek. There was no discussion. Vote was 5 yes, 0 no and the motion was carried.

ITEM VI A Application 2011-02, Russell Road, North of Old Highway

This item was done verbatim by a separate party and will an attachment to these minutes.

NEWINGTON CONSERVATION COMMISSION

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Present: Chairman Block, Commissioner Igielski, Commissioner Byer, Commissioner Zelek, Commissioner Shapiro.

OLD BUSINESS

Russell Road, north of Old Highway

Chairman Block: Is there anybody at the meeting that has not familiarized themselves with the application, the testimony and the materials. Then I accept that everybody is qualified. All right then, the public hearing has been closed, it is now time for us to deliberate on the application and there will be no comments from the audience please.

Commissioner Igielski: At this time I would like to bring to the attention of the public and the applicant that I for one, received in the mail last Friday with information in it, was some kind of an open letter and it was unsigned and once I saw basically what it was I did nothing with it. I just left it on my desk and I have no intention to read it because of the avenue that was derived and sent to me and something, even though I received it I myself have not looked at it and I have not factored into my deliberation of all of the information that I have been reviewing regarding this application. Everything that I have been reviewing is everything that had been submitted as part of the public hearing process. Nothing more, nothing less, just the public hearing process, which is what our regulations require us to do. Thank you Mr. Chairman.

Chairman Block: At this point I would like to concur with John's statements and also concur that I also received it, opened it, determined that it was not appropriate material and did not read it. I think perhaps, did any other members of the Commission receive it?

Commissioner Shapiro: I also received it and opened it to see what it was and I did not read it once I realized that it was pertinent to our meeting. I haven't looked at it at all.

Commissioner Zelek: Mr. Chairman, I also received it, I did not take it into consideration, I believe most of the content in there was taken from minutes from prior meetings, so I don't think there is any new information in that.

Commissioner Byer: I did not receive it because I'm still living at my beach house and picking up my mail periodically. I did not pick up my mail for that week.

Chairman Block: I did report the receipt of it to Chris and asked for a response from the town attorney who confirmed that we should not consider it, and we have abided by those instructions.

Chairman Block: Any comments on the application now?

Commissioner Igielski: Mr. Chairman, my review of all of the information on the points that I have picked up and from my overall review and working towards a decision, the points along the lines of the application started out with 71 lots and at the last public hearing date, it was down to 62. Changes have been made by the applicant during the process of these four months that we had of hearings. The one proposed wetland, wetland three, which was eliminated on the change where it was not eliminated, instead the two lots that were directly in that vicinity were removed from the plan. In reviewing the prints that I have, the activities that remain based upon what the applicant had to remove from the process was work in the upland review area of wetland number two, and number three and the area of number two Newington Conservation Commission

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was at the north end where a detention basin was being proposed and likewise with respect to wetland three, there was no activity in either of these wetlands, but the upper review area and in the case of wetland three, in was also (inaudible) in the upland review area, wetland three and just eliminated lot 37 that was in there. It was mentioned during the public hearing that there was going to be selective cutting of trees in the upland review area, and those selected tree cuttings would be done (inaudible) the detention basin for wetland two and the site work for (inaudible) and possibly for road work in that vicinity. Even though the applicant chose to remove the elimination of wetland trees from the application and retain added wetlands, as heard from many people, during the public hearing, we still planned on adding a mitigation area which would provide more (inaudible) for the Town of Newington. There was a lot of discussion concerning blasting, had one expert give his opinion regarding its effect on the wetlands and the upland review areas which is what our area of authority is. Fundamentally and they were going to commit to us that there was going to be no blasting in the upland review areas, no blasting (inaudible) in the wetlands. I am still concerned even though the blasting is in an area outside of the wetlands, and upland review areas the impact it might have on the wetlands and the areas of the upland review areas. The basic designs involved with this development were standard types of designs (inaudible) with DEP designs, various national standards and other standard business practices of installing the drainage along the roads as well as the hill beds and other items directly applicable to a subdivision. All of the activity would be under the oversight of the town engineering department and town engineer. Those are some of the high points I feel are part of the application process and again, a significant change from what was provided initially when the application was first submitted to the last public hearing meeting which had reduced the number of lots, retained (inaudible) tree and included mitigation.

Chairman Block: Anybody else?

Commissioner Zelek: Perhaps this is the reason I'm referring to the report on Newington Walk that was dated and recommendations made by the panel of independent environmental experts from the Connecticut Review Team and presented in the CERT report entitled Newington Walk, Open Space Residential Subdivision. The CERT report was submitted into the record and given to the Commissioners at the last public hearing on August 16th. From what I understand from the testimony of the applicant, on August 16th, at that hearing the applicant stated that he received a copy of the report that morning, and was well aware of its contents and could make adjustments to their plans in response to the recommendations in the report. After reviewing the report and the modified plan that was submitted, I find the applicant took a minimum amount of corrective action and did not fully follow the recommendations in the CERT report. Section 10.3 of the Inland Wetlands and Water Course Regulations of the Town of Newington clearly state a permit shall not be issued unless the agency finds on the basis of the record, that a feasible and prudent alternative does not exist. Feasible and prudent alternatives were presented in the CERT report which the applicant had access to. The applicant chose not to implement all feasible and prudent alternatives. I would like to reference page 35 of the CERT report which states, although the central and western wetlands are not to be developed, and therefore, not directly impacted, there will be significant indirect impacts to many wetland dependent species, such as green frog, wood frog, spotted salamander, and also the adjacent uplands to meet their habitat requirements. The adjacent upland habitat will be severely reduced and no longer will be available to these species. Additional, there will be derogation of the wetland area due to runoff from the development area, encroaching into the wetland area, and disturbances through human activity. On page 36 of the CERT report there are a number of recommendations for protecting the wetlands that have not been incorporated into the revised plan, such as, regarding the northeast vernal pool, the CERT report recommends shifting Trap Rock Way away from the vernal pool. The applicant has not shifted the location

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of Trap Rock Way, but instead has proposed erecting a retaining wall within the regulated area to support Trap Rock Way, with the addition of a guide rail and fencing surrounding the function of the vernal pool. This fencing would impede access by wildlife to the vernal pool. Additional home sites numbers eleven and twelve are within one hundred feet of the functional vernal pool. Page 36 of the CERT report cites the (inaudible) paper that recommends the distance of up to 750 feet be considered critical habitat and that at least seventy-five percent of that zone be kept undisturbed and that partially closed canopy (inaudible) be maintained. The applicant has stated that the plan is to remove all trees with the exception of a few buffer zones around the perimeter of the development site. The applicant has not stated that they would leave a canopy around the northeast vernal pool, and has left two home sites within one hundred feet of the vernal pool. The applicant had the opportunity to modify the plans in accordance with the recommendations of the CERT report. That report states that home sites eleven, twelve, thirteen, fourteen, fifteen, and thirty-five, thirty-six and thirty-seven be removed to protect the vernal pool but instead the application was (inaudible) those that would have otherwise occupied the wetland that they originally proposed. Regarding central wetlands, testimony by (inaudible) Associates and the (inaudible) stated on numerous occasions that the central wetlands are a high value, natural resource and there is strong evidence that its usage in supporting area wildlife and it's uses as a drinking area for species cited under the assessment. (Inaudible) six of the report recommends that lots number thirty-eight through forty-two remain undeveloped in an effort to increase the buffer along the eastern portion of the central wetlands. The applicant has not taken reasonable action to increase this buffer. The sites along the eastern slope of the central wetlands would also allow Trap Rock Way to be shifted to the west and away from the northeast vernal pool. The applicant has taken to action to follow the recommendations provided by CERT regarding these home sites. Again, all feasible and prudent alternatives have not been taken. Impact on (inaudible) to the wetlands remains unsettled and (inaudible) has not been submitted. We heard from a member of the public who stated that he was a geologist at a university and had four years of experience and he stated into the record that the (inaudible) can never be convicted. If this Commission approves this application then I would like to ask that a special condition be attached to it including a natural bond should any damage to the wetlands be incurred by blasting. Regarding the value of the testimony of the consultants hired by the applicant, on several occasions during various proceedings direct questions were put to the consultants, and on more than one occasion the attorney for the applicants stole away the microphone from the independent intended respondents. On several occasions, members of this Commission witnessed the attorney coaching responses. While the attorney may have a right to do this, it has created a reasonable doubt in my mind that all responses were not as freely or honestly given by the respondents had they not been so closely monitored by the applicant's attorney. If this applicant should (inaudible) I strongly recommend an additional bond responsible for delivering a case, closely examined the overwhelming body of evidence to deny this application that was gathered by an independent panel of environmental experts from the Connecticut Environmental Review Team and presented in the CERT report entitled Newington Walk, Open Space Residential Subdivision.

Chairman Block: Anyone else?

Commissioner Shapiro: First I would like to thank the members of the Newington community for showing this interest and coming out to all of these meetings. You people have shown a lot of interest and we do appreciate it. I would also like to thank my fellow Commissioners here for offering a very complete and thorough compilation and they basically said a lot of what I had intended to say. But I did want to say specifically that the development in questions will have a negative impact on the wetlands and the environment. Apparently there is no positive proof that the required blasting will not have a major impact on the existing

wetlands. The upland habitat will be severely reduced, and no longer available to wetland species as stated in the CERT report. Thank you.

Commissioner Byer: I too rely on the CERT report and I didn't get (inaudible) and I'm still concerned about the run-off from the back of these homes that will end up in the wetland area. I too have a lot more questions than I have answers. I do appreciate the applicant who came before us several times with changes, trying to accommodate what he heard from the general public and also the Commissioners. In the balance, it doesn't weigh more than the CERT report.

Chairman Block: Thank you.

I would also like to enter my comments. I, when I first heard about the proposal, I was concerned about a matter that really dealt more with the habits of the Conservation Commission and that is the impact, visually upon the (inaudible) and the applicant did an awful lot to try to resolve that. He also reduced at several stages of development he was proposing, but he still is enclosing the central wetlands and it's important that it be stated on the record that this is a very novel natural feature. It is a (inaudible) water table wetlands area that is above grade. It is on top of the mountain and we heard in several applications, a matter of public record, that the mountain is basalt which is vertically fractured and therefore the wetland exist because it is insilting that has sealed the cracks in the rocks. On the last day of the public hearing it was disclosed to this Commission that the blasting was going to extend down approximately eighteen feet into the rock and over the area of some three or four hundred feet or more, more or less parallel to the wetlands. We have common knowledge in Newington as to the seismic effects of blasting in that area, and the damage that it can cause and for the possibility of fractures to open seams and drain the wetlands, destroy this natural feature, is a very significant concern. For us to be told that they will extend the blasting, on the last day of public hearing and to not be provided with information from the appropriate engineer as to the blasting, I think, weighs heavily in my concern as against the wealth of public information, that it can very well be detrimental. So for those reasons I (inaudible) I also think the Commission, as to the fact of that the drainage from the homes up hill of the central wetlands that abut, touch on, or extend over the upland review area, bodes ill for the ability to maintain the natural condition of that area. Run-offs, fertilizers, and so on all are going to have a great potential to harm the wetlands. Furthermore, the additional excavations, six, eight, ten more feet for the network of utilities that are going across the mountainside, will create additional drainage, robbing the wetlands of watershed. So, for all of these reasons I believe that this application is denser and poorly designed and again, all (inaudible) to the CERT report and the other concerns have not been displaced.

Commissioner : Mr. Chairman, the term controlled blasting was mentioned at various times, to my recollection, I was unable to pick up a true definition of it, controlled blasting, and not being a blasting person myself, I expected to hear and see more definitive information as to what that would mean, that would be going on up there, and I was (inaudible) the blasting was going to be a controlled process, a lengthy process, how much of a true alternative it would be versus the effect on the wetlands because I know, and bring to the Commissioner's attention through our regulations is specifically the definition of regulated activity including the sentence that states, the agency may rule that any other activity located within such upland review area or in any other non-wetland or non-water course area is likely to impact the wetlands and water courses and is a regulated activity. So even though there is no blasting proposed for the upland review area, there is blasting that was mentioned to be elsewhere on the site, and therefore even though it might be, and would be beyond the one hundred foot buffer, it's something I think we have some degree of authority over and it was

concluded that this was a regulated activity. The wetlands were created over how many decades and years by nature and to have even controlled blasting, have an accident happen, destroy a wetland within a couple of days, and it might be a case of where it would not be known until years later, and all of a sudden, there is no more wetland, and that could possibly be connected to blasting that had gone on previously. So I too am very cautious about blasting on that site, even outside of the hundred foot buffer area because of the potential negative effect that it would have on the wetlands.

Chairman Block: Any further comments?

Mr. Chris Greenlaw: Typically at this point what we do is we always prepare suggested comments for approval when you have a vote.

Commissioner Igielski: Mr. Chairman, if I may, if there is no more discussion by any of the Commissioners, I will ask Chris Greenlaw if the application is complete?

Mr. Greenlaw: Yes.

Chairman Block: Hearing yes, there is a list of suggested conditions, which I see he is in the process of passing out. So at this time, it would be appropriate for all of the Commissioners to review the suggested conditions, identify any additions, deletions, changes to the suggested conditions.

Mr. Greenlaw: If I may, Commissioner Igielski, I'd like to state that the first twenty or twenty-two comments are standard comments, and then specifically the additional comments are conditions, we usually reserve those that are site specific, and if you will note, condition C parts one through four, and D are upon the recommendations of the environmental review team report, I'd like to point that out.

Commissioner Igielski: Mr. Greenlaw, do you have a copy for the applicant?

Mr. Greenlaw: We have provided the applicant with the suggested conditions.

Chairman Block: Having reviewed the proposed conditions, I would just like to reiterate that I think that the way this is going, we will, I will ask for a motion on the approval of the permit, and then, if that passes, we will consider the conditions to add. So we are voting on, still with the caveat that if it is voted favorable, we will be able to add conditions. Is that viable?

Commissioner Igielski: Chairman, this is a change in procedure as a Commission

Chairman Block: I just asked if the Commission thinks it appropriate for us to have a discussion on these conditions, beforehand, may be putting the cart before the horse. What are your thoughts on that? I presume you want the conditions talked about first.

Commissioner Igielski: Yes, I would like our traditional way which is to review all of the conditions, develop a final list and then the motion would be to issue a permit subject to those conditions that we developed. It would be one motion, all inclusive.

Commissioner Byer: (Inaudible) to go through that lengthy process (inaudible).

Commissioner Shapiro: I would agree that we should vote first.

Commissioner Zelek: I would tend to agree with John that we stay the course and we have a motion and conditions.

Chairman Block: So are there any concerns as to the stated conditions one through thirty-six.

I do have a question, Chris, on number thirty-two, I just think it might be semantics, all catch basins shall be trapped into the separate main line system. The separate as to whether or not the catch basins are also the separate ones when you are talking combined, what is meant by separate to the main line?

Chris Greenlaw: I believe what they are saying is that the trap is on the outlet, or a hood, it's not (inaudible).

Commissioner: But it is a combined main line system?

Chris Greenlaw: Right. The other thing I want to stipulate is that it is not a total, it's not a total of thirty-six, we go one through fourteen with our standard conditions, and then we jump to twenty-one, twenty-five, twenty-six. I just want to verify that.

Chairman Block: That is correct, numerically, there are omissions to the sequence of numbers for conditions that will not included. If there are no comments on items one through thirty-six, then let's go onto the additional conditions. Are there any discussions or comments or changes to those? That is A through H.

Commissioner Igielski: Mr. Chairman, having worked with the former town engineer, Tony Ferreira, would you say it's kind of combined effort, these comments with the review and discussion that would have been subsequent to that?

Chairman Block: Anybody else?

Commissioner Zelek: Should there be any damage to the wetlands done by the blasting a bond should be added to cover possible damage.

Commissioner Igielski: Somewhat open ended because of the nature of this? Looking for input from all Commissioners.

Chairman Block: I would propose that these conditions, this is condition number one is standard because as we heard, there was a considerable amount of testimony as to the fact that the effect of blasting could well extend beyond one hundred foot distance and as I commented before, and others have commented, the seismic effect of opening up the fissures and draining the wetlands is a primary concern. It might very well be an irreparable insult to the wetlands and therefore I would like to add that the developer will not perform any blasting until a appropriate geotechnical engineer has done an examination of the geology of the area, and reports with a high degree of certainty that the blasting that is to be performed will not have a detrimental effect on the wetlands. As to whether or not a bond should also be required, I would say yes, but I also understand, that the damage could be irreparable. So I hesitate to saw how large a bond would be appropriate. I would like to thank (inaudible) for their concerns on this.

Commissioner Igielski: I'm not certain that, regarding the procedure, the Commission, the way you worded it, could, (inaudible). It could be a condition that another expert could report and identify above all certainty. The report could say one thing after that, but (inaudible..)

Chairman Block: Again, having heard this testimony on the last day of public hearing, I certainly don't feel confident in approving this without having a better response than what we did and with this counter advice so many citizens reporting over so many decades of experience with the blasting effectively (inaudible) the hundred foot distance. So if we, I would want to have the condition in there and if anybody could come up with something better, I would be happy to entertain it.

Commissioner Igielski: Do you remember the language?

Chairman Block: Again, the developer will not perform any blasting on the site.....

Commissioner Igielski: Mr. Chairman, is what you are reciting something that is written down and that you could give to the secretary?

Chairman Block: No, not at the moment, but the wording is, as you said, but, the developer will not perform any blasting prior to the submission of a report and certification from a hydro-geological engineer that the blasting as proposed will with a high degree of certainty grade, and that's not a very exacting standard but it's certainly more than fifty percent, will not harm the integrity of the wetlands.

Commissioner Igielski: I can go along with that, stipulating that what you are saying is that the blasting outside the hundred foot buffer shall be (inaudible.)

Commissioner: Well, I'm saying no blasting on the site.

Chairman Block: No blasting at all before the report. Any further discussion on that?

Commissioner: For Peter's sake, miscellaneous condition one, and that the developer will not do any blasting on the site until after.....

Recording Secretary Arburr: Mr. Chairman, it should be written out

Commissioner Igielski: What is needed for your proposed condition written down so that the Commissioner who reads the motion that is made along with the conditions will have that written condition in front of him to be included in the motion.

Chairman Block: If you want to take a short recess.

Recess

Chairman Block: Let us resume, and we have wording for condition I.

Commissioner Igielski: Condition I will read as follows: The developer will not perform any blasting within the hundred foot buffer at the existing wetlands. The developer will not perform any blasting any where else on the site, until and unless a (inaudible) is reported and certified that the seismic or other effects of the blasting will not cause harm to the wetlands. Such report shall be required to be approved by the Town Engineer.

Mr. Chairman, I'd like to suggest condition A would all be part of the conditions and the motions made be all inclusive. Some background on condition A, this applicant in discussions they talked of the utility trenches and that there might be surface water because of the nature of these trenches, and there was talk of installing (inaudible) as a condition that reads as follows: Check zones consisting of special impervious soil, for installing utility

trenches, the total number and locations of the check zones, to be approved by the Town Engineer.

Chairman Block: All right. Any discussion on that motion? Chris, I'd like to ask, is it feasible?

Chris Greenlaw: We can work the detail on that, as far as curtain, or rain around pipes, that's what you're getting so the water doesn't migrate into the trenches. We would want a detail for that just to provide a condition so they design it....

Commissioner: As opposed to locations along the routes.

Chris Greenlaw: Exactly.

Commissioner: And this would be slowed down, the water migration, not to allow the free flow.

Chairman Block: Any discussion regarding that? Hearing none, do we have a motion for this application?

Commissioner Igielski: Are there any other submissions to be considered at this point? Seeing none I will make a motion that the Commission after a review of the application and supporting documentation of the public hearing held on May 17, 2011, June 21, 2011, July 19, 2011, and August 16, 2011 and closed on August 16, 2011 subsequent discussion by Commission members and using the goals outlined in Section 10.2 of the Inland Wetlands and Watercourse Regulations of the Town of Newington issue a permanent by (inaudible) rule for application 2011-02 and subject to the following standard conditions: Numbers 1,2,3,4,5,6,7,8,9,10,11,12,13,14,21,25,26,27,32,34,36 and subject to the following additional conditions:

- A. The by-laws of the homeowners association will include its responsibility for periodic maintenance and cleaning of the drainage system, including all retention basins. Prior to ratification by the homeowners association any proposed by-law change relevant to this permit will be submitted to the Commission for approval.
- B. Prior to issuance of the first Certificate of Occupancy for each construction phase, the applicant will submit to the Commission written certification signed by a Connecticut Licensed Professional Engineer confirming that all required drainage improvements have been installed in accordance with the approved plans for the respective construction phase.
- C. The applicant's environmental consultant shall provide the following professional services required by this permit:
 - 1. Supervise the activities associated with construction of the wetland mitigation area.
 - 2. Prior to the issuance of the first Certificate of Occupancy provide written certification that all activities associated with the consideration of the mitigation area have been installed in accordance with the approved plan.

3. Monitor the new mitigation area for thirty-five years and submit a report to the Commission each year on his or her findings and any work that has to be done.
 4. Develop a maintenance program that has to be followed by the homeowners association and approved by the Commission, said maintenance program to be received and homeowners declaration that the restriction that it cannot be amended without prior approval of the Newington Conservation Commission.
- D. A seed mix that given to the detention basins be consistent mix such as that required by the New England Erosion Control Restoration mix for detention basins and moist sites for New England wetland plants. www.newp.com or as recommended by the applicant's professionals.
- E. In those cases where individual lots and driveways are to be constructed after the subdivision is completed, (and sedimentation protection is removed from the road's drainage system), construction entrance and anti-tracking pads will be specified for each individual or shared driveway where they intersect with the subdivision road.
- F. Establishment of the mitigation barrier will be done without disturbing wetlands soils within the site. Any soil brought to the site to be used for the mitigation process will require approval from the Town Engineer.
- G. The contractor will apply surface roughing as necessary to ensure topsoil bonds to disturbed ground.
- H. Prior to the Chairman signing the plans, the applicant shall provide written proof that the applicant has executed an Indemnification Agreement with the Town of Newington holding the Town harmless from any claims arising from the granting of this permit. This document shall be filed in the Land Records, Town of Newington prior to signing of the approved plans.
- I. The developer shall not perform any blasting within the one hundred foot buffer of the existing wetlands and will not perform any blasting any where else on the site unless (inaudible) as recorded and certified that this (inaudible) other effects of the blasting will not cause harm to the wetlands. Such report shall be approved by the Town Engineer.
- J. Check zones consisting of special impervious soils shall be installed in all utility trenches and the total number and location of the check zones shall be approved by the Town Engineer.

Chairman Block: Is there a second on the motion?

Commissioner Igielski: Mr. Chairman, just a few additional comments on the motion. I just want to bring it to the attention of the people in the audience that some of these conditions are from the CERT report. Thank you.

Chairman Block: Is there a second on the motion.

Seconded by Commissioner Shapiro.
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Chairman Block: Do you want a roll call vote?

Commissioner Zelek: I vote no based on comments made earlier, I don't think we are in accordance with Section 2.3 and Inland Wetland Watercourse Regulations of the Town of Newington has performed all feasible alternatives as presented in the CERT report.

Commissioner Igielski: I vote in favor of the motion.

Commissioner Shapiro: I vote no.

Commissioner Byer: No.

Chairman Block: And I vote no as well.

Note: Vote was one yes (Igielski), four no (Block, Byer, Shapiro, Zelek) and therefore the motion is denied.

Chris Greenlaw: Mr. Chairman, just a question, I just want to ask, the Commission voted no, do they want to state their reasons why or do they want to refer to the comments they made when the application was first introduced this evening?

Commissioner Shapiro: I voted no basically because I don't feel that there was specific proof that the blasting would not have a negative effect, and I feel that they, there was just too much negative (inaudible) relative to the normal wetland conditions and ecological systems and this hasn't really been discussed, but there are so many characteristics that have to be changed, and altered. It could be that this was maybe the wrong site for (inaudible.)

Chairman Block: Joan?

Commissioner Byer: I'm going to make my comments on the CERT report, and the fact that (inaudible) you couldn't require the homeowners to control the runoff into the wetlands.

Chairman Block: Beyond the comments that I made earlier, the density of this development and it's surrounding of the central wetlands (inaudible) was so intense, and this environment is so fragile that they did not convince me that the development and the use of the property for residential purposes would adequately protect the central wetlands and that is beyond my concern as I stated before as to the geological concerns of the site. Those are my reasons and the reasoning of my fellow Commissioners. I thank you.

ITEM VIII

PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

Ms. Rose Lyons, 46 Elton Drive noted that it would have been appropriate if more Commissioners members were present at to night's meeting.

ITEM IX

COMMUNICATIONS AND REPORTS

- A. Mr. Greenlaw noted that he received a communication from DEP on legislation that was passed in the last session of the State Legislature and related to the wetland statutes. It was the consensus of Commission members to put the matter on next month's meeting agenda.

- B. Commissioner Igielski entered into the record the Commission's appreciation for the assistance provided by Mr. Anthony Ferraro to the Commission during his tenure as Town Engineer.

Motion made by Commissioner Igielski to adjourn meeting at 9:07 p.m. and was seconded by Commissioner Zelek. There was no discussion. Vote was 5 yes, 0 no and motion was carried.

Peter M. Arburr, Recording Secretary

Commission Members

Tayna Lane, Town Clerk

Town Manager John Salamone

Edmund Meehan, Town Planner

Councilor Myra Cohen

Chairperson, Town Plan and Zoning

Ben Ancona Jr., Town Attorney

Anthony Ferraro, Town Engineer

Lucy Robbins Wells Library (2)